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UNITED
NATIONS

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Economic and Social Council

Distr.
LIMITED

E/CN.4/Sub.2/1990/L.30
23 August 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session

Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Draft resolution submitted by Mr. Alfonso Martínez, Ms. Bautista, Mr. van Boven, Ms. Chernichenko, Ms. Daes, Mr. Eide, Mr. Ilkahanaf, Mr. Joinet, Ms. Ksentini, Mr. Maxim, Mrs. Mbonu, Mr. Sadi, Mr. Suescún Mouroy and Mr. Yimer

1990/ . Question of human rights and states of emergency

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolution 1983/18 of 22 February 1983 in which the Commission requested the Sub-Commission to give the study on the implications for human rights of situations known as states of siege or emergency submitted by Mrs. Nicole Questiaux (E/CN.4/Sub.2/1982/15) further consideration,

Recalling further that in that same resolution the Commission on Human Rights requested the Sub-Commission to propose measures which would ensure respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency exist, especially of the rights

referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights, which prohibits derogation from certain rights even in time of public emergency,

Recalling Economic and Social Council resolution 1985/37 of 30 May 1985, Commission on Human Rights resolution 1983/18 of 22 February 1983 and Sub-Commission resolution 1983/28 of 6 September 1983 concerning the question of human rights and states of emergency,

Recalling that, by its resolution 1985/32 of 30 August 1985, the Sub-Commission requested Mr. Leandro Despouy to draw up and update a list of countries which proclaim or terminate a state of emergency each year and to prepare an annual report containing reliably attested information on compliance with the rules, national and international, guaranteeing the legality of the introduction of a state of emergency,

Having noted during the work of its thirty-eighth, thirty-ninth, fortieth, forty-first and forty-second sessions the importance for the effective enjoyment of human rights of the principles concerning respect for the rules, national and international, guaranteeing the legality of the introduction of the state of emergency,

Noting with interest the usefulness, indicated by several speakers, of the provision by the Special Rapporteur and the secretariat of technical assistance to States requesting it under the programme of advisory services in the field of human rights,

Having noted the need to strengthen the observance of all the non-derogable human rights, as well as the legal guarantees enabling a remedy to be sought from the competent authorities,

Having noted further that, in some circumstances, such as situations of war, armed conflict or internal unrest, emergency measures are taken without a state of emergency being officially proclaimed and that such measures have an impact on human rights which warrants thorough study by the Special Rapporteur,

Noting in addition the increased co-operation of Governments with the Special Rapporteur and the need to continue to analyse the information received by the Special Rapporteur with the greatest care,

1. Expresses its deep appreciation to the Special Rapporteur and in particular its satisfaction with his third annual updated report and with the list of States which have proclaimed, extended or terminated a state of emergency since 1 January 1985 (E/CN.4/Sub.2/1989/30 and Add.1 and Add.2/Rev.1);

2. Expresses its appreciation also to Governments, competent organs of the United Nations, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status which have submitted their information and comments to the Special Rapporteur on the question of human rights and states of emergency;

3. Invites Governments, competent organs of the United Nations, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status to provide further information to the Special Rapporteur;

4. Invites Governments to limit the introduction of states of emergency exclusively to situations which are sufficiently serious and exceptional to justify them, particularly in the case of internal unrest, in order to avoid making the use of states of emergency commonplace and thus possibly perpetuating them;

5. Recognizes the fundamental importance of the existence, in each country, of specific and effective national legislation enabling such situations to be dealt with in a manner conforming to international norms, invites Governments which have not yet done so to consider the adoption of internal legislation consistent with the requirements of international instruments concerning states of emergency and requests the Special Rapporteur to continue his work with the aim of submitting to the Sub-Commission draft standard provisions on emergency situations, including situations of internal unrest;

6. Requests the Secretary-General, under the programme of advisory services in the field of human rights, to give consideration to the technical assistance which might be furnished by the Special Rapporteur or by the secretariat to States requesting it;

7. Invites the Special Rapporteur to continue the work with which he has been entrusted and to present to the Sub-Commission, at its forty-third session, the next annual report and list updated on the basis of the information received and to update his present report so that the Commission on Human Rights, at its forty-seventh session, will have before it the most recent and accurate information available;

8. Requests the Secretary-General to give the Special Rapporteur all the assistance he may require in order to enable him to carry out his work successfully; and in particular to respond in an effective way to the information submitted to him;

9. Decides to examine the updated report and list transmitted by the Special Rapporteur as a matter of priority under the agenda item "The administration of justice and the human rights of detainees: (b) Question of human rights and states of emergency".

10. Recommends the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, noting Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1990/... of .. August 1990, recommends to the Economic and Social Council the following draft decision:

'The Economic and Social Council, noting Commission on Human Rights decision 1990/... and resolution 1990/... of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, endorses the request by the Sub-Commission to Mr. Leandro Despouy, Special Rapporteur on Human Rights and States of Emergency, to continue to update the list on states of emergencies and to present in his annual report to the Sub-Commission and the Commission on Human Rights draft standard provisions on emergency situations. The Council further endorses the request to the Secretary-General to provide the Special Rapporteur with all the assistance he may require in order to enable him to carry out his work and in particular to respond in an effective way to information submitted to him.'."